

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

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**SUMMARY**  
**PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING**  
**April 15, 2010**  
**Sacramento, California**

**I. PUBLIC MEETING**

**A. CALL TO ORDER AND INTRODUCTIONS**

Chairman MacLeod called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., April 15, 2010, in the Auditorium of the State Resources Building, Sacramento, California.

**ATTENDANCE**

Board Members Present  
Chairman John MacLeod  
Jonathan Frisch, Ph.D.  
Bill Jackson  
Jack Kastorff  
Guy Prescott  
Willie Washington

Board Members Absent

Board Staff  
Marley Hart, Executive Officer  
Mike Manieri, Principal Safety Engineer  
Tom Mitchell, Senior Safety Engineer  
David Beales, Legal Counsel  
Leslie Matsuoka, Governmental Programs Analyst  
Chris Witte, Executive Secretary

Division of Occupational Safety and Health  
Steven C. Smith, Principal Safety Engineer

Others present  
Dave Harrison, Operating Engineers  
Local 3  
Dan Leacox, Greenberg Traurig  
Jordan Monier, SMUD  
Kate Smiley, AGC  
Jim Gallmeyer, Hi Temp Products  
Cory Parmer, ARB

Curtis Robinson, Hi Temp Products  
Terry Thedell, San Diego Gas & Electric  
Patrick Bell, DOSH  
Reginald Travis, Hi Temp Products  
Kim Heroy-Rogalski, ARB  
Jeremy Smith, California Labor Federation

Elizabeth Treanor, PRR  
Judi Freyman, ORC  
Jim Halloran, Caterpillar  
Michael Donlon, DOSH

Steve Johnson, ARC-BAC  
Kevin Bland, CFCA, RCA  
Colleen P. Kraus, Valero  
Joan Gaut, CTA

B.

OPENING COMMENTS

Chair MacLeod indicated that this portion of the Board's meeting is open to any person who is interested in addressing the Board on any matter concerning occupational safety and health or to propose new or revised standards or the repeal of standards as permitted by Labor Code Section 142.2

Dave Harrison, Operating Engineers Local 3, stated that Petition 507 was filed in 2008, and the last report received was that six months was needed to collect data and perform studies. The Petitioners have been asking all along to adopt a rulemaking, but there has been delay after delay after delay, and there seems to be a failure to communicate among all parties involved, most specifically with the Petitioners.

He stated that the Petitioners had asked to be included in any subcommittee meetings, field studies, or any meeting that had to do with the petition or the rulemaking petition because they felt they were being left out, and they were eventually included in those meetings. Although the original request was to develop a simple and repeatable methodology that could be used to implement a rule, there have been many field studies with nothing to show for it.

A draft visibility test was developed, and Mr. Harrison submitted his comments regarding that test. He stated that Mr. Mitchell had asked for his comments regarding the use of mirrors to be submitted as soon as possible. He stated that the original issue regarding mirrors was that the use of mirrors (or cameras) is not feasible. He asked that a rulemaking proposal be developed and noticed for public hearing as soon as possible.

The following commenters agreed with Mr. Harrison:

- Jeremy Smith, California Labor Federation
- Kate Smiley, Associated General Contractors of California
- Kevin Bland, California Framing Contractors Association, Residential Contractors' Association; Mr. Bland also spoke on behalf of Bruce Wick, California Professional Association of Specialty Contractors

Hans Boersma of the Standards Board staff presented a demonstration of the online, searchable index of Title 8, which should be available for beta testing by the public within the next couple of months, and he encouraged the meeting attendees to participate in that testing and provide their comments to him so that if there are improvements to be

made, they can be done before the index “goes live.” He stated that the beta testing period would last for approximately 30 days, and the target date to go live is July 1, 2010. There is a maintenance process in place in which updates will be made every 30 days.

Dr. Frisch asked whether indexing would be included as part of the rulemaking process and whether the public would have an opportunity to comment as to how new rules will be indexed. Mr. Boersma responded that that could be made part of the advisory committee process. Currently, the engineer involved in the rulemaking package will identify key words in the rulemaking and the text to be included in the index. In addition, the public is encouraged to submit suggestions at any time.

Dr. Frisch commended Mr. Boersma on the work he has put into the project.

Mr. Jackson asked whether the beta testers have already been identified. Mr. Boersma responded that there already are quite a few people involved and stated that he hopes to make the test site public as well. Ms. Hart added that there will be a link to the test site on the Board’s website.

Mr. Kastorff stated that the more beta testers there are, the better the test process will be, and he stated that this is an exciting prospect.

Chair MacLeod asked whether there is any way to get Barclay’s to reference the index. Mr. Boersma responded that Barclay’s declined to include the Standards Board’s index when they realized the size of the project. However, Mr. Boersma plans to talk to Barclay’s and the Office of Administrative Law about including links to the index on their sites.

Mr. Jackson commended Mr. Boersma on his work.

Chair MacLeod also commended Mr. Boersma on the project, stating that it is a remarkable body of work.

C. ADJOURNMENT

Chair MacLeod adjourned the public meeting at 10:27 a.m.

## **II. PUBLIC HEARING**

A. PUBLIC HEARING ITEM

Chair MacLeod called the Public hearing of the Board to order at 10:27 a.m., April 15, 2010, in the Auditorium of the State Resources Building, Sacramento, California.

Chair MacLeod opened the Public Hearing and introduced the first item noticed for public hearing.

1. TITLE 8:      **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7  
Article 76, Section 4650  
Article 81, Section 4797  
Article 85, Section 4823  
**Acetylene (Horchner)**

Mr. Manieri summarized the history and purpose of the proposal, and he indicated that it was ready for the Board's consideration and the public's comment.

There was no public comment or Board discussion on this matter.

Chair MacLeod introduced the next item noticed for public hearing.

1. TITLE 8:      **GENERAL INDUSTRY SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 7, Article 88  
Section 4848  
**Update of Welding Fire Prevention and Suppression Procedures**

Mr. Manieri summarized the history and purpose of the proposal, and he indicated that it was ready for the Board's consideration and the public's comment.

There was no public comment on this matter.

Dr. Frisch asked whether the ANSI Z49.1-94 standard is still available from ANSI. Mr. Manieri responded in the affirmative.

Mr. Jackson expressed continuing concern regarding incorporating relatively expensive, relatively obscure ANSI or other standards into Title 8 by reference. He stated that in general, we need to start thinking about whether the referenced document is readily available to the regulated public.

Mr. Washington echoed Mr. Jackson's concern, and suggested that perhaps Board staff should include links to the documents in the searchable index.

Mr. Jackson stated that he has free access to some of the NFPA standards, but it is read-only. That is still a lot better than having no access at all. In many cases, the end user does not even know where to look to find those standards, and that can hamstring stakeholders.

Mr. Kastorff stated that he would like to discourage Board staff from using the phrase “incorporated by reference,” because the fundamental problem is that we are sending people to other sources to determine the requirements of our standards.

Mr. Manieri responded that there is the problem of copyright protection. He stated that an option might be to explore the ways that stakeholders can access the document electronically through a centralized source; there is no good answer to the question at this point, but it is something that Board staff could explore.

Dr. Frisch suggested that this issue be taken up again during the Business Meeting.

Chair MacLeod responded that he would hesitate to do it at today’s Business Meeting because it has not been noticed.

Mr. Prescott stated that although NFPA standards are nationally recognized, the California State Fire Marshal does not adopt them. He asked whether the Board is in compliance with CalFire regulations when we adopt NFPA standards. Ms. Hart responded that whenever we do anything that has anything to do with the fire regulations, we get a letter of approval from the California State Fire Marshal.

Ms. Hart went on to state that although we incorporate by reference, the document incorporated by reference often does not need to be purchased, as it refers more to the manufacturer. Employers can look for references in labels on equipment purchased. In this particular standard, it does apply to a manufacturer’s label, so employers would not have to purchase the standard.

Mr. Beales stated, as a point of order, that this is a public hearing and this item has not been noticed as a Board discussion item; so even discussing it in the context of a Public Hearing is something that he would suggest the Board not do at this time.

Chair MacLeod agreed, stating that everyone is familiar with the concerns.

B. ADJOURNMENT

Chair MacLeod adjourned the Public Hearing at 10:44 a.m.

### **III. BUSINESS MEETING**

Chair MacLeod called the Business Meeting of the Board to order at 10:44 a.m., April 15, 2010, in the Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED SAFETY ORDER FOR ADOPTION

1. TITLE 8:     **CONSTRUCTION SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 4, Article 10  
Section 1590  
**Use of High Visibility Apparel—Private Roads and Off-Highway Situations**  
(Heard at the March 18, 2010, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal and indicated that the package is now ready for the Board's adoption.

MOTION

A motion was made by Mr. Jackson and seconded by Dr. Frisch that the Board adopt the proposal.

A roll call was taken, and all members present voted "aye." The motion passed.

2. TITLE 8:     **CONSTRUCTION SAFETY ORDERS**  
Division 1, Chapter 4, Subchapter 4, Article 11  
Section 1599  
**Traffic Control—Number of Flaggers**  
(Heard at the March 18, 2010, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal and indicated that the package is now ready for the Board's adoption.

MOTION

A motion was made by Mr. Kastorff and seconded by Mr. Prescott that the Board adopt the proposal.

A roll call was taken, and all members present voted "aye." The motion passed.

B. PROPOSED PETITION DECISION FOR ADOPTION

1. Colleen P. Kraus, Process Safety Design Director  
Valero Refining Company  
**OSHSB Petition File No. 512**

Petitioner requests that the Board amend the Petroleum Safety Orders to include a new safety order regarding chain and cable ladders within the petrochemical industry.

Ms. Hart summarized the history and purpose of the petition and indicated that the proposed decision was ready for the Board's adoption.

### MOTION

A motion was made by Mr. Jackson and seconded by Mr. Kastorff that the Board adopt the proposed petition decision.

Dr. Frisch asked whether so-called Jacob's ladders are forbidden outside of the petrochemical industry. Mr. Manieri stated that there are no specific orders that describe the design and construction of Jacob's ladders, and there is no passage within Title 8 that specifically addresses them.

Dr. Frisch stated that the determination has been made to limit the proposed advisory committee to the Petroleum Safety Orders, and he expressed concern that if there is potential for these devices to be used outside of the petrochemical industry, staff should consider whether to include them in the General Industry Safety Orders as well. Mr. Manieri responded that staff is aware that these ladders are used extensively in the petroleum industry, but staff would consider expanding its inquiry.

Dr. Frisch stated that if these ladders are used outside the petroleum industry, a regulation that applies to all workplaces and not just the petrochemical industry should be considered. Ms. Hart responded that, in response to the petition, the recommendation is to limit the advisory committee to the petrochemical industry. Often, however, when staff receives a petition request from a particular industry, they discover upon researching the petition that it might apply to other areas and will expand the committee accordingly.

Dr. Frisch asked whether staff would come back to the Board and ask to expand the advisory committee should that happen; he expressed concern that only petrochemical representatives would be included in the advisory committee as the proposed petition decision is now constructed. Ms. Hart stated that if Dr. Frisch would like staff to look at all industries, they certainly could do that.

Dr. Frisch stated that he recognizes that the petitioner's interest is narrow, and we need to honor that, but we also have a responsibility to all of the employees and employers in the State of California to look after their best interests. He expressed concern that the Board might establish a regulation related to Jacob's ladders that only applies to a narrow subset of the total working population that might be exposed to them if that is the case. He asked whether the motion could be broadened to ask that the advisory committee consider whether this device is used beyond the petroleum industry as part of their charge.

Mr. Beales stated that one option would be to ask Mr. Jackson whether he is willing to incorporate Dr. Frisch's modification into his original motion. Mr. Jackson declined, stating that he did not think it was necessary, expressing agreement with Ms. Hart that

staff should stay focused on petroleum and consider whether the advisory committee should be expanded. He stated that he knows these ladders are used in some other industries, but he does not know how widespread their use is.

Mr. Beales stated that if the motion has been seconded, then there is a motion before the Board, and before another motion is considered, it would be appropriate to vote on the motion that is currently before the Board.

A roll call was taken, and all members present voted “aye,” with the exception of Dr. Frisch, who voted “no.” The motion passed.

Chair MacLeod stated that Dr. Frisch’s concern can be addressed without a problem. Mr. Manieri stated that staff would, to the extent possible, consider whether or not there is sufficient basis to expand their research of these ladders into other industries, although he suspects it is a very narrow area of application.

C. PROPOSED VARIANCE DECISIONS FOR ADOPTION

Mr. Beales stated that file number 08-V-089M1 should be removed from the consent calendar, as a change in ownership of the conveyance or conveyances in question had resulted in that matter not being the subject of the hearing that was held. He also stated that the recommendation on all remaining matters is that the variances be granted in accordance with the proposed decisions, and he asked that the Board adopt the consent calendar as modified.

MOTION

A motion was made by Dr. Frisch and seconded by Mr. Washington to adopt the consent calendar as modified.

A roll call was taken, and all members present voted “aye.” The motion passed.

D. OTHER

1. Legislative Update

Mr. Beales stated that since the written update was prepared, AB 1652, which involves the ski industry, was amended in some technical respects. AB 1692 was amended to delete a reference to the Division of Occupational Safety and Health (this is a bill that concerns the deposit of fines into the General Fund). AB 1702 regarding defibrillators was amended on April 5 so it no longer concerns defibrillators. AB 1833 and AB 1945, which deal with a requirement that economic impact analyses and various review reports be prepared regarding regulations failed to advance beyond the Assembly committee, to which they were sent for consideration. However, the committee left the door open to reconsider these matters. Finally, AB 2744, initially introduced on March 1, proposed



nonsubstantive word and punctuation changes in Labor Code Section 6325. The bill was amended on April 8 to make a substantive, if subtle, change: this Labor Code provision states certain things that constitute an imminent hazard to employees; as that section is now worded, an imminent hazard is based upon a condition or a practice; this bill would add pieces of equipment to that list.

2.

#### Executive Officer's Report

Ms. Hart stated that the Calendar of Activities includes two advisory committees. The first is a two-day meeting on April 21-22, convened by George Hauptman in Sacramento, regarding the use of broadband signal alarm technology for requiring warning devices and alarms for backing vehicles and equipment. The second meeting is on May 4, convened by Conrad Tolson, regarding General Industry Safety Orders Section 4906 and a proposed new Section 4906.1 with regard to container-handling rubber-tired gantry cranes.

She further stated that at the end of March and beginning of April, we thought that staff would be back to work full-time, but that did not happen; we are still furloughed. It looks like that condition will continue through June 2010.

3.

#### Future Agenda Items

Mr. Prescott asked that next month's agenda include an update on Petition 507. He expressed strong feeling that staff has lost sight of the original petition, and he would like the original petition's language brought back for review by the Board. The original petition was very simplistic and straightforward, and it is becoming a tangled mess instead.

He also expressed the concern that staff continues to be biased in favor of CARB in the process and would like to discuss what is necessary for the Board to form a subcommittee and take over the rulemaking process from staff so this bias can disappear. He believes that we have hit what Dr. Frisch had termed as "paralysis by analysis," and it is time to move forward.

He also would like to know, perhaps not at the public level but privately, what the disciplinary action plan is for the Board is when staff does not follow the Board's requests and directions.

Finally, he stated that the previous day in Washington, D.C., Eric White of the CARB staff represented to Federal EPA that the Standards Board would rule on this safety issue before the end of 2010. In order to make that schedule, we need to move forward.

Dr. Frisch asked whether Mr. Prescott wanted staff to bring a proposed rulemaking for consideration or whether he wanted further discussion on the issue. Mr. Prescott responded that he was asking for further discussion of the original language suggested in

the petition. He expressed concern that the original intent of the petition has been lost and that staff has gotten so far off-base on one issue (determining the test methodology). The original petition did not require such testing, because no blockage of visibility does not require testing.

Mr. Beales stated that when this issue was brought back before the Board during previous meetings, it was for discussion and potential action by the Board. He asked whether Mr. Prescott is asking for discussion or discussion plus the possibility of action. Mr. Prescott responded that he was asking for discussion and action.

Dr. Frisch asked for a presentation from staff at a future Board meeting regarding alternatives to incorporating documents by reference. He expressed the hope that we might be able to clarify circumstances where such incorporation creates an undue burden on employers, as opposed to circumstances where it is a legal necessity but does not actually create a burden on the employer. Also, we need to consider what can be done when there is an undue burden. If a rulemaking references a standard to the extent that a piece of equipment must have a label indicating that it meets a standard, that is not an undue burden. However, he is concerned about circumstances where an employer is required to obtain the referenced standard in order to understand the requirements. He stated that it is incumbent upon the Board to determine what can be done to make Title 8 easier to understand. He asked that staff come back to the Board with concrete recommendations of how to achieve that end with respect to incorporation by reference. He expressed the concern that there are more and more Title 8 standards that incorporate other standards (such as ANSI or NFPA) by reference, and it is becoming cumbersome.

Mr. Prescott agreed with Dr. Frisch's comments, but he expressed the concern that when Federal OSHA adopts a standard that incorporates a document by reference, the Board's hands are tied. Dr. Frisch responded that in such a case, nothing else can be done, but we need to have a process to determine when something better can be done.

E. CLOSED SESSION

The closed session was not held.

F. ADJOURNMENT

Chair MacLeod adjourned the Business Meeting at 11:10 a.m.